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IN THE

Supreme Court of the United States

NO. 29 OCTOBER TERM, 1960

SCHOOL DISTRICT OF ABINGTON TOWNSHIP, PENNSYLVANIA, JAMES F. KOEHLER, O. H. ENGLISH, EUGENE STULL and M. EDWARD NORTHAM, Appellants,

v.

EDWARD LEWIS SCHEMPP, SIDNEY CERBER SCHEMPP, Individually and as Parents and Natural Guardians of ELLORY FRANK SCHEMPP, ROGER WADE SCHEMPP and DONNA KAY SCHEMPP, Appellees

On Appeal from a District Court of Three Judges for the Eastern District of Pennsylvania.

AMICUS CURIAE BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA RE JURISDICTION

JOHN D. KILLIAN III
Deputy Attorney General
ANNE X. ALPERN
Attorney General

State Capitol
Harrisburg, Pa.

SMITH BROS. CO., INC., LAW PRINTERS, 435-439 BLVD. OF ALLIES, PITTSBURGH 19, PA.

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The School District of Abington Township, Pennsylvania, and other defendants, appeal from the final decree of the three-judge court below which perpetually enjoined them from causing the Holy Bible to be read to public school pupils, or as part of any ceremony, observance, exercise or school routine. Section 1516 of the Public School Code of 1949, the Act of March 10,

1949, P. L. 30, as amended, which was held unconstitutional by the court below, required teachers, on penalty of discharge, to cause the Bible to be read. The final decree was issued on September 17, 1959. Notice of appeal was filed on November 12, 1959.

On December 17, 1959, the statute was amended by Act No. 700 of the 1959 General Assembly. This amendment deleted the compulsory features of the old law and provided an entirely new provision making it mandatory to excuse any child from the Bible reading or from attendance at the Bible reading on the written request of his parent. The amended Bible reading statute was adopted by a vote of 178 to 10 in the House of Representatives and by a vote of 47 to 3 in the Senate of Pennsylvania.

After the amended act was signed into law, the Attorney General of Pennsylvania sought and was granted permission to appear of counsel for the appellants and to submit briefs and make oral argument. At that stage of the proceedings, procedural questions arose in the court below with respect to its jurisdiction to determine questions of mootness, abstention and the appropriateness of the record before the court, due to the amendment subsequent to the filing of the notice of appeal. The substantive questions presented were not and have not been considered. On June 9, 1960, the lower court denied, for want of jurisdiction, appellant's Motion for Relief from Judgment and Final Decree.

Counsel for the school district have filed a companion Jurisdictional Statement citing the prevailing legal authorities and developing the arguments upon which this Court should vacate the final decree of the court

below and remand the case with directions to dismiss. This Jurisdictional Statement is filed in order to indicate the desire of the Attorney General to have the amended act passed upon by the State courts prior to a final determination of the issues by the Supreme Court of the United States, and to have an appropriate record made under the new law. No determination of legality of the 1959 act has ever been made by any court, lower or appellate, in the Commonwealth.

Despite the amended Bible reading statute, the broad terms and scope of the final decree of the court below preclude all of the school districts of Pennsylvania from operating with legal certainty under the new law. Over twenty-three hundred school districts, not parties to this litigation, need clarification of their legal responsibilities and duties in connection with their long-standing practice of Bible reading. The uncertainty caused by the lower court's decision and final decree has had a serious impact on the administration of the schools throughout the Commonwealth.

It is submitted that in matters of legislation concerning the administration of the educational sytem of Pennsylvania, the courts of the Commonwealth should be given an opportunity to pass upon the constitutional validity of the new statute and the practices conducted thereunder prior to review by the Supreme Court of the United States. If this Court will vacate the final decree and remand the case for the purpose of dismissal of the action, a new action may be brought in the courts of Pennsylvania under the new statute to test these questions. This will enable the proper record to be made for review.

For these reasons and those stated in the Jurisdictional Statement filed by counsel for the school district, it is respectfully urged that this Court vacate the final decree of the court below and remand the case with directions to dismiss the action.

Respectfully submitted,

JOHN D. KILLIAN III
Deputy Attorney General

ANNE X. ALPERN
Attorney General